

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GIL N. MILEIKOWSKY,

Plaintiff and Appellant,

v.

TENET HEALTHSYSTEM et al.,

Defendants and Respondents.

B159733

(Los Angeles County
Super. Ct. Nos. BS056525 &
BC233153)

ORDER MODIFYING OPINION
AND DENYING REHEARING

THE COURT:

It is ordered that the opinion filed herein on April 6, 2005, be modified as follows:

On page 2, the two sentences in lines 1 to 2 are omitted and the following inserted in their place:

Appellant Gil Mileikowsky, M.D., appeals from an order which granted (1) a request for terminating sanctions and (2) a request for \$8,500 in monetary sanctions. The order was based on his repeated failure to provide discovery. For the reasons set forth herein, the court's order is affirmed.

Although an order granting a request for terminating sanctions is not appealable and the losing party should ordinarily await entry of the order of dismissal to file notice of appeal, we denied a motion to dismiss the appeal on grounds of prematurity because an order granting monetary sanctions in amounts over \$5,000 is immediately appealable. (Civ. Proc. Code, § 904.1, subd. (12).) As is explained further below, although we attempted to limit our review to issues pertaining to the monetary sanctions awarded, our reasoning necessarily encompasses the propriety of granting terminating sanctions. We presume, therefore, that after the remittitur issues, an order striking the operative complaint¹ and dismissing the action will be entered.

This modification does not constitute a change in the judgment.

Mileikowsky's petition for rehearing is denied.

HASTINGS, Acting P.J.

CURRY, J.

GRIMES, J.*

¹ At one point, Dr. Mileikowsky had two related litigations pending, one a petition for writ of mandate in case no. BS056525 and the other a complaint seeking damages in case no. BC233153. Our understanding is that, in accordance with the parties' stipulation and a court order, case no. BS056525 was to be dismissed when Dr. Mileikowsky filed a fourth amended complaint in case no. BC233153.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.